IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL

Writ Petition No. 941 of 2005 (S/S)

Nitesh Nautiyal S/o Late K.L. Nautiyal
Presently R/o Chiniyal Saur
Jogat Road
Tehsil Dunda
District Uttarkashi … Petitioner

Versus

1. State of Uttaranchal through the
   Secretary Medical Health
   Uttaranchal Dehradun
2. The Director
   Medical & Health
   Uttaranchal Dehradun
3. Chief Medical Officer
   District Uttarkashi
4. Deputy Chief Medical Officer
   Uttarkashi … Respondent

Sri B.S. Negi, learned counsel for the petitioner
Sri H. Belwal, learned standing counsel for the respondents.

Hon'ble B.C. Kandpal, J.

By way of this writ petition, the petitioner has sought a writ of mandamus for commanding the respondents to consider the claim of the petitioner to appoint him on any suitable post in the Department according to his qualification under the provision of Dying in Harness Rules.

The petitioner further prayed in the nature of mandamus directing the respondents to release the entire amount of the fund and pecuniary benefits of father of the petitioner due with the Department and decide the representation of the petitioner dated 05.06.2005.

Brief facts giving rise to this petition are that the father of the petitioner was initially appointed in the Department at State Allopathic Dispensary Adalikhal (P.H.C. Naini Danda) District Pauri Garhwal on 04.11.1978 on the post of Pharmacist by the order of Chief Medical Officer, Pauri Garhwal. Thereafter, father of the petitioner was transferred at different places and at the time of his death he was posted at Uttarkashi. During the service period the father of the petitioner

proceeded on medical leave on 05.05.1988 due to ailment in kidney. In the meantime, the father of the petitioner met with an accident resulting the head injury and died on 23.03.2004 during his service period.

The petition further reveals that after the death of Sri K.L. Nautiyal (father of the petitioner) Smt. Sarojni Nautiyal sent a representation dated 20.07.2004 to the respondent No. 3 regarding release the entire amount of the fund and pensionary benefits due with the Department. Thereafter On 14.09.2004 Smt. Sarojni Nautiyal sent another representation to the respondents to decide her earlier representation. In reply to this letter Chief Medical Officer directed the respondent No. 4 i.e. Deputy Chief Medical Officer, Uttarkashi to submit the detail report for the proper disposal of the case but nothing has been done by the respondents as yet.

On 05.06.2005, petitioner sent his representation before the respondent No. 3 i.e. Chief Medical Officer, Uttarkashi stating therin that he may be given appointment under the provision of Dying in Harness Rule, 1974 which is still pending before the respondent No. 3 hence this writ petition.

Heard learned counsel for the parties and perused the record.

It reveals from the perusal of the petition that after death of Sri K.L. Nautiyal, the petitioner has responsibility to look after his old mother.

In the petition it has submitted that the petitioner deserves to be given an appointment on compassionate ground and the decision in this regard should be taken as early as possible by the respondents so that the hardship of the petitioner should be mitigated. The delay in making the appointment of the petitioner on the compassionate ground would certainly defeat the purpose.

The Hon'ble Supreme Court in a decision cited in ***1989 (4) SCC page 468 Sushma Gosain and others Vs. Union of India & others*** has observed as follows:-

> *"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not*

be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

Further the Hon'ble Apex Court in another decision reported in ***1991 (2) SCC page 689 Phoolwati (Smt.) Vs. Union of India & Others*** has been pleased to observed in a case of appointment to be made under Dying in Harness Rules observing therein that:-

"Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

After having perused the aforesaid decisions of the Hon'ble Apex Court it becomes clear that the object underlying a provisions from grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crises resulting due to death of the bread-earned which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful employment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions for appointment on the post following a particular procedure.

On the basis of the discussion made by me as above, I feel it just and proper to direct to respondents to consider the petitioner claim for compassionate appointment and take appropriate decision on the

application/representation filed by the petitioner and his mother within a period of one month.

The petition is allowed and the respondents are directed to consider the representation dated 05.06.2005 moved by the petitioner and other benefits as has been alleged in the petition pertaining to his appointment under the Dying in Harness Rules as well other benefits within a period of one month by passing speaking and reasoned order from the date of production of certified copy of the order.

In view of the above observations, the writ petition is finally disposed of.

(B.C. Kandpal, J.)

13.07.2005
ASWAL